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IN THE

Supreme Court of the United States

No. 620

G. O. PAUDLER, *Petitioner*

v.

LYDA M. PAUDLER, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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May it Please the Court:

Petitioner, G. O. Paudler, respectfully requests the United States Supreme Court to issue writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on December 21, 1950.

OPINIONS BELOW

There was no opinion written or filed by the District Court, so far as Petitioner knows, but the opinion of the Court of Appeals (R. 174-178), is reported in 185 Fed. (2) 901.

JURISDICTION

The judgment of the Court of Appeals was entered on December 21, 1950 (R. 179). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

FIRST QUESTION PRESENTED

Jurisdiction Federal Court—Diversity of Citizenship —Wife's Abandonment Matrimonial Domicile—Citizenship Clause Federal Constitution:

First question presented is one of Federal Court jurisdiction, dependent upon diversity of citizenship, to-wit, domicile of Respondent, in the present suit filed by her as a citizen of Arkansas against Petitioner as a citizen of Texas, for partition of property accumulated by them while husband and wife (R. 2-8), wherein the Respondent admits (in a contest of her legal right to choose a domicile different from that of her husband in the State of their matrimonial domicile) she abandoned her husband and home (R. 145), in Texas, (where they were married and always resided) to live in Arkansas in the same apartment with another married man (R. 90, 11)

"charged with illicit cohabitation" (R. top p. 145), and obtained an Arkansas divorce without personal notice (R. 160) upon constructive service "by publication" only (R. 160), and wherein there was other evidence, abundant if not conclusive, to sustain the judgment of the trial court dismissing Respondent's suit for want of jurisdiction, the legal question herein presented being more particularly whether (under Art. 14, sec. 1, of the Federal Constitution, declaring all persons born in the United States are *citizens* of the "state wherein they *reside*"), such provision required the Court of Appeals to hold, as it did hold, erroneously Petitioner asserts, that "*it is well established that plaintiff was at liberty to instantly transfer her citizenship from Texas to Arkansas * * * without necessity and from choice * * * for any reason that seemed sufficient to her.*"

SECOND QUESTION PRESENTED

Jurisdiction Foreign Court—Divorce Decree, Constructive Service—Evidence of Residence—Full Faith and Credit Clause, Federal Constitution:

The second question involves the legal right of Petitioner to question the jurisdiction of a foreign court decree, rendered by an Arkansas Court, without personal notice, upon constructive service "by publication" only, (R. 160), and upheld by the Court of Appeals in the present suit, filed by Respondent as a citizen of Arkansas against Petitioner as a citizen of Texas, for partition of property

accumulated by them while husband and wife (R. 2-8), wherein Petitioner attacked the Arkansas decree on the ground the Respondent never became a citizen of that state (R. 8-22) and wherein Respondent admitted she abandoned her husband and their home in Texas (R. 145) where they were citizens and had their matrimonial domicile (R. 79, 174-5) to live in Arkansas in the same apartment with another married man (R. 90, 111) charged with "illicit cohabitation" (R. top p. 145), and obtained such Arkansas divorce (R. 160), without personal notice, upon constructive service "by publication" only (R. 160), there being abundant if not conclusive evidence showing Petitioner never had the bona fide intention of permanently removing to the State of Arkansas, the Petitioner here asserting that the Court of Appeals erred in holding in this case that, under the Full Faith and Credit Clause, Art. 4, sec. 1, of the Federal Constitution, the trial court made a "mistake" in dismissing the Respondent's suit, on the ground that the Arkansas Court "*necessarily found that plaintiff was a bona fide resident of Arkansas*" and "*this finding should be accorded full respect.*"

THIRD QUESTION PRESENTED

Inherent Power Federal District Court to Determine Jurisdiction, Where Intention to Change Residence an Issue.

The third question presented is whether (in a suit of this kind, where Federal Court jurisdiction is dependent

upon diversity of citizenship, and the trial court's order granting Defendant's motion to dismiss for want of jurisdiction is sustained by evidence showing that Respondent never removed to the State of Arkansas with the "intention" of becoming a citizen of that state, and Respondent admitted she left her husband and home in Texas, in which they had their matrimonial domicile, R. 71, 174-5, to live in Arkansas in the same apartment with another married man, R. 90, 111, "charged with illicit cohabitation", R. 145), the Court of Appeals, in reversing the judgment of the trial court, committed an error in deciding a jurisdictional fact contrary to the evidence which inherently the trial court had the right to weigh and finally determine, where the issue of lack of intention was abundantly supported by the evidence.

STATEMENT

Petitioner sued Respondent, according to Respondent's Bill of Complaint, (R. 2-8) filed in the Federal District Court of Texas (R. 2-8), against Petitioner, for partition of property accumulated by them while husband and wife in Texas (R. 2-8), where they were citizens and had their matrimonial domicile, from the time of their marriage in 1921 to 1948 (R. 174-5), when Respondent left for the State of Arkansas (R. 174-5) where she undertook to acquire decree of divorce (R. 160).

In due time, Petitioner filed motion to dismiss (R. 8-23). In said motion to dismiss, Petitioner includes two claims as to the law, as follows:

First Respondent did not, and could not legally, under the facts, by abandoning the matrimonial domicile of herself and husband in Texas, acquire a separate domicile for herself in Arkansas, absent (a) necessity for protection against her husband, etc., (b) residence in the new domicile, and (c) intention to remain there permanently, to be determined by her course of conduct.

At any rate, Petitioner denies that, as held by the Court of Appeals in this case (R. 174-8), there is any "*well established*" law which (in the absence of fear, protection, etc.,) granted to Respondent the "liberty", unqualifiedly and unconditionally, to "*transfer her citizenship from Texas to Arkansas * * * without necessity and simply from choice * * * for any reason that seemed sufficient to her*", as held by the Federal Court of Appeals in this case (R. 174-8). Certainly the Fourteenth Amendment to the Federal Constitution did not confer such right.

Second. Respondent having abandoned her husband and home in Texas, in which they had their matrimonial domicile at the time of such abandonment, to go to Arkansas, where she obtained divorce decree, without personal notice, *upon constructive service only*, Petitioner contends that, even if such judgment necessarily found that Respondent was a bona fide resident of Arkansas, such

finding is not entitled to "full respect", under the Full Faith and Credit Clause, or any other law, and does not preclude the Petitioner, in the State of their matrimonial domicile, from attacking such finding to show lack of jurisdiction, because neither of the parties to the Arkansas divorce decree was a citizen of such state.

The trial court in this case, after hearing the evidence pro and con, briefly summarized herein, sustained said motion and dismissed Respondent's suit for partition (R. 163). Upon appeal by Respondent the Court of Appeals reversed the trial court (R. 179).

To prove to this Court that the Court of Appeals in this case decided, and intended to decide, the aforesaid important questions of Federal law and procedure, according to the above stated *LAW*, and not in accordance with the issues of *FACT* upon which the trial court based its ruling, the following brief summary of such facts is submitted:

The undisputed evidence shows that the Respondent, a married woman, with the matrimonial domicile of herself and husband in the State of Texas, in which they were citizens, rode away one day with another married man, both leaving home, family, and much property in said state (R. 145), the Respondent writing back to her daughter, "*I know you should hate your mother for doing such a thing*" (R. 43) but that she is only "leaving for a *while*" (R. 42), thereby showing that her escapade was intended as a temporary absence only. *Respondent does not and*

cannot quote a single word spoken or specify a single act done, by Petitioner, to cause her to be afraid of her husband.

Respondent admits that she thereafter lived in the same apartment in Harrison, Arkansas (R. 111), where she did the cooking and acted as housekeeper for this married man companion (R. 144), "charged with illicit cohabitation" (R. top p. 145), but swears that her immediate meeting with this married man upon arrival in said state, whither both claim they had gone for "*stomach trouble*" (R. 83, 144), was "*purely an accident*" (R. near top p. 111), (which queer testimony caused the Chanceller of the *Boone* County, Arkansas, court, in which she was unsuccessful in obtaining divorce, to remark, R. 145, he had never heard of the climate there being beneficial for stomach trouble).

The undisputed evidence shows Respondent then shifted to *Pulaski* County, Arkansas, where she finally obtained divorce from her husband domiciled and residing in Texas, *upon constructive service by publication only* (R. 160), all of which uncontroverted evidence is inconsistent with the Respondent's contention she left her husband because of fear of husband or intention to change her matrimonial domicile from Texas to Arkansas, especially when, upon the trial of the issue of domicile in the court below, Respondent was asked by her counsel the direct question whether it was her "intention" to make Arkansas her "*home*" for the "*rest of her life*" (R. bot. p. 83), she

answered evasively she had "stomach trouble" and "felt better" and intended "to live there" (R. bot. p. 83), and then and there dodged the real issue of whether she had "the intention to remain there permanently or indefinitely". She never did say whether she intended to live there after she regained her health, and certainly never did deny her intention to return to Texas after getting a divorce and property division, even though she afterwards gave an affirmative answer to her lawyer's question pressed upon her as to whether it was her intention to live permanently in Arkansas, which affirmative answer as to intention was a self-serving declaration not binding upon the Court.

The trial court in this case (after exercising the prerogative of a trial court in passing upon the credibility of the Respondent, who was seen by him and not by the appellate court, and of the weight to be given her testimony, especially when the unsupported testimony of such Respondent is discredited, inconsistent, and contradictory, as shown), dismissed the Respondent's Federal Court suit for lack of diversity of citizenship, and found that, under the facts showing the Respondent's "course of conduct" and the inferences to be drawn from the circumstances, the Respondent in this suit was not a citizen of the State of Arkansas when such suit was filed.

REASONS FOR GRANTING WRIT

As pointed out, under first paragraph, entitled "Statement", *ante*, the Court of Appeals, not only has decided the *FACTS*, contrary to the facts, and the "accepted and usual course of judicial proceedings", but, regardless, of facts, has erroneously decided the *LAW* as follows:

(1) That the LAW is "well established" that a married woman is "at liberty" to abandon the husband and home, in the state where they are citizens and have their matrimonial domicile, and acquire a separate domicile from that of the husband, "*without necessity and simply from choice * * * for any reason that seems sufficient to her.*"

Which decision of the law means, of course, that it is "well established" that *without "necessity"*, and *without "reason"*, the wife is *"at liberty"* to transfer citizenship (as if it were a mere chattel), and, under the 14th Amendment to the Federal Constitution, thereby become a "citizen" in another state, if she chooses to *"reside"* there.

(2) That it is the LAW that such married woman is also "at liberty", under any circumstances, to slip into a foreign county for the sole purpose of obtaining divorce, without personal notice, and upon constructive service "by publication" only, and that the finding of residence by the Court in such foreign county shall receive "full credit" by the Court in the state of their matrimonal domicile.

Which decision of the law means that thereafter the Court in the state of their matrimonial domicile is precluded from attacking such judgment because of lack of jurisdiction over the parties.

Obviously, such erroneous decisions of the Federal law and practice, as announced, are of such tremendous importance to the Federal judiciary, as require supervision and correction by this Court, particularly upon at least two legal questions of major significance, to-wit, (1) jurisdiction of Federal Courts, where dependent on diversity of citizenship, and (2) validity of "quickie" divorce decrees rendered by a court of foreign jurisdiction in favor of a migratory spouse upon constructive service only.

CONCLUSION

Petitioner prays that writ of certiorari be granted.

Respectfully submitted,

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